

PATENT
Serial No. 09/819,286
Amendment in Reply to Final Office Action of June 27, 2005

REMARKS

Reconsideration of the present application and entry of the present amendment are respectfully requested.

In the Final Office Action, claims 29-33 and 35-40 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite, due to the word "appears" in claims 29 and 35.

Applicants traverse this rejection. However, to expedite allowance of the present application, claims 29 and 35 have been amended for clarification. The claims were not amended in order to address issues of patentability and Applicants respectfully reserve all rights they may have under the Doctrine of Equivalents. Applicants furthermore reserve their right to reintroduce subject matter deleted herein, either at a later time during the prosecution of this application or continuing applications. It is respectfully submitted that amended claims 29 and 35 particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Accordingly, withdrawal of the rejection to claims 29-33 and 35-40 under 35 U.S.C. §112, second paragraph, is respectfully requested.

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In the Final Office Action, the Examiner indicated that claims 10-20 and 24-26 are allowed, and that claims 5-8 would be allowable if rewritten in independent form. Applicants gratefully acknowledge the indication that claims 10-20 and 24-26 are allowed, and that claims 5-8 contain allowable subject matter.

In the Office Action, claims 1, 3-4, 9, 21-23, 27-28 and 34 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 6,727,914 (Gutta). Further, claim 2 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gutta in view of U.S. 6,177,931 (Alexander). Applicants respectfully traverse these rejections and submit that claims 1-4, 9, 21-23, 27-28 and 34 are patentable over Gutta and Alexander for at least the following reasons.

It is respectfully submitted that Gutta is not available as prior art under §102(e) for the following reasons. The present application was filed March 28, 2001, and thus has the benefit of the November 29, 1999, changes to 35 U.S.C. §102(e). Under 35 U.S.C. §102(e):

A person shall be entitled to a patent
unless ... (e) the invention was described

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in ... (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent ... (emphasis added)

Gutta is not an invention "by another" since Mr. Gutta is a co-inventor of the present application and a sole inventor of Gutta. Accordingly, It is respectfully submitted that Gutta is not available as prior art under §102(e).

Further, It is respectfully submitted that Gutta is also not available as prior art with regard to the present application under §103(a) since under 35 U.S.C. §103(c) :

Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or

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subject to an obligation of assignment to
the same person. (emphasis added)

The subject matter of Gutta and the claimed invention are and were, at the time the claimed invention was made, owned by, or subject to an obligation of assignment to the same person(s) or organization(s). Accordingly, It is respectfully submitted that Gutta is not available as prior art under §103(a).

Accordingly, it is respectfully submitted that claims 1, 3-4, 9, 21-23, 27-28 and 34 should be allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2, 5-8, 29-33 and 35-40 should also be allowed at least based on their dependence from independent claims 1, 27 and 34, as well as for the separately patentable elements contained in each of the dependent claims.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Applicants reserve the right to submit further arguments in support of the above stated position as

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well as the right to introduce relevant secondary considerations including long-felt but unresolved needs in the industry, failed attempts by others to invent the invention, and the like, should that become necessary.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 
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August 2, 2005